



October 12, 2010

Elaine M. Howle  
State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

**Board Members:**

**Curt Pringle**  
Chair

**Tom Umberg**  
Vice-Chair

**Lynn Schenk**  
Vice-Chair

**Russell Burns**

**David Crane**

**Rod Diridon, Sr.\***

**Fran Florez\***

**Richard Katz**

**Judge Quentin  
L. Kopp\***

\*past chair

**Roelof van Ark**  
Chief Executive  
Officer

Dear Ms. Howle:

Attached please find the 6-Month response to the Bureau of State Audits report 2009-106, *High Speed Rail Authority: It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management*.

To ensure full disclosure, I would like you to understand that the tasks of managing, controlling and oversight of this project remain a huge challenge for the Authority due to a lack of additional qualified staff. As the project continues to evolve, the ability to hire additional competent and experienced staff (as was envisaged in the budget and planning) has not been authorized, due to the lack of a State budget, and the subsequent hiring freeze announced by the Governor.

If you have any questions about the actions noted in the response, please contact Carrie Pourvahidi, Chief Deputy Director, at 322-1422, or myself.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roelof van Ark", with a stylized flourish at the end.

**Roelof van Ark**  
Chief Executive Officer

cc Curt Pringle: Chairman

Attachment: BSA 6-MONTH REPORT

ARNOLD SCHWARZENEGGER  
GOVERNOR



## BSA 6-MONTH REPONSE

### ***Recommendation 1***

*To ensure it can adequately respond to funding levels that may vary from its business plan, the Authority should develop and publish alternative funding scenarios that reflect the possibility of reduced or delayed funding from the planned sources. These scenarios should detail the implications of variations in the level or timing of funding on the program and its schedule.*

### **Response**

The Authority is currently in the process of hiring new financial consultants, something which has been planned for some months now. The new consultants should be approved at our Board Meeting on October 20, subject to the passing of a State budget. These new consultants will assist to develop the alternative funding scenarios. As we noted in the 60-day response, we will provide the full set of alternative funding scenarios in the final response.

### ***Recommendation 2***

*In order to adequately plan for private investment, the Authority should further specify the potential costs of planned revenue guarantees and who should pay for them.*

### **Response**

The Authority continues working with the financial and legal consultants to provide a discussion of revenue guarantees, although this will be enhanced once new financial consultants are under contract.

### ***Recommendation 3***

*In order to respond effectively to circumstances that could significantly delay or halt the program, the Authority should assure that it implements planned actions related to managing risk.*

### **Response**

On July 7, 2010, the Legislature added an additional management position designated by the Authority as Deputy Director, Risk Management. The position will assume responsibility for risk management for the entire project. While the position has been approved as indicated in the Fiscal Year 2010-2011 Department of Finance Change Book, the Authority has not been able to establish the position for lack of an approved Fiscal Year 2010-2011 budget. When the budget is approved, the Authority will move forward with the steps necessary to fill the position with the expectation that the position will be filled by date the Authority submits the final audit response.

The Authority included in its Fiscal Year 2010-2011 budget a request for two audit positions and received authorization for the positions. Authority staff has developed the duty statement for one of the positions but, due to the lack of staff, has not yet developed a duty statement for the other audit position. Further, due to a lack of a State budget and the current freeze on hiring, the

Authority has not begun the hiring process. After passage of the budget, the Authority will evaluate its current staffing to determine the earliest practicable time to fill the audit positions.

***Recommendation 4***

*To avoid possible legal challenges, the Authority should ensure that the peer review group adheres to the Meeting Act or seek a formal opinion from the Office of the Attorney General regarding whether the review group is subject to this act.*

**Response**

The Authority staff continues to work with legislative contacts to obtain clarification of the law. It is the Authority's expectation that adequate clarification will be obtained for inclusion in the final audit response.

***Recommendation 5***

*To ensure that it does not run out of funds for administrative and preconstruction activities prematurely, the Authority should track expenditures for these activities and develop a long-term spending plan for them. It should also develop procedures and systems to ensure it complies with Recovery Act requirements.*

**Response**

As noted in the Authority's 60-day response, the computer system has been enhanced to include systems for tracking administrative versus project expenditures and for compliance with Recovery Act requirements. The system enhancements went online in May 2010 and full operational capability was contingent on the timeframe necessary for a complete historical record of the Authority's contracting and budgeting data to be entered into the system. At present, the Authority is working with the system contractor to resolve issues concerning the identification and numbering protocols for document location within the system. However, due to a lack of staff at the appropriate level, the Authority has not been able to provide sufficient policy guidance to staff regarding key elements of the system. The Authority expects to have resolution of the document identification and numbering issue by December 2010 so that document and data entry can commence. Subject to the approval to hire staff, full system operability is expected before the submission of the final audit response.

The Authority's readiness for receipt of Recovery Act funds is under review by the Inspector General. Staff of the Inspector General's office is reviewing the Authority's 60-day response to the Bureau of State Audits report and expects to complete its review before the timeline for submission of the 6-month response.

***Recommendation 6***

*The Authority should participate in the development of key policy documents, such as the authority's business and strategic plans. Further, Authority members should adhere to their policies and procedures, including those outlining how they may communicate with contractors.*

## **Response**

For sake of clarity we assume that “the Authority” referred to in this recommendation, is the Board of the Authority. On July 1, 2010, the Authority submitted to the Board a recommendation that it adopt as its key policy documents the Business Plan and the Strategic Plan. On August 5, 2010, the Board adopted that recommendation within its amended policies and procedures.<sup>1 2</sup>

The amended policies and procedures, at page 5, Article IV, paragraph 5, include a provision requiring that Board members communicate with contractors through the Chief Executive Officer.

## **Recommendation 7**

*In order to ensure that staff receives relevant information on the status of the program, the Authority should amend the project oversight consultant’s work plan to include a critical review of the progress reports for accuracy and consistency. Authority staff should also request that the Program Manager revise its progress reports to include information on the status of contract products and services.*

## **Response**

As noted in the Authority’s 60-day response, the work plan of the project management oversight consultant has been amended to include provisions requiring the critical review of the program management consultant’s progress reports. The program management consultant has revised its progress report format and process to ensure that the reports accurately reflect the project status or project products and services.

## **Recommendation 8**

*To determine if it is paying invoices that accurately reflect work performed, the Authority should ensure that staff adheres to controls for processing invoices. For example, staff should not pay invoices from regional contractors until they receive notification from the Program Manager that the work billed has been performed, or until they have conducted an independent verification.*

## **Response**

The system for invoice review, verification and approval developed by the Project Manager and referenced at *footnote 9* in the 60-day response is now in use for the Project Manager’s and the Authority’s review and approval of invoices from Regional Contractors. The Project Manager now submits a signed copy of the approval form, referenced at *footnote 10* in the 60-day response, with each invoice indicating that invoices have been thoroughly reviewed and approved by Regional Managers. The process is detailed in the Contract Administration Manual attached to the response to *Recommendation 10*.

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<sup>1</sup> Recommendation to Board to amend policies and procedures

<sup>2</sup> Amended Board policies and procedures

**Recommendation 9**

*To ensure that it does not misuse public funds and can hold contractors accountable, the Authority should adhere to conditions of its contracts and work plans, and make any amendments and modifications in writing.*

**Response**

As noted in the 60-day response, the AECOM contract has been amended adding the Vision California task to the scope of work.

On September 10, 2010, final approval was reached on a contract amendment to the Project Manager contract requiring the contractor to bill using an adjusted field overhead rate.<sup>3</sup>

**Recommendation 10**

*To determine if payment controls are implemented, the authority should ensure its written policies and procedures reflect intended controls over invoice processing and offer sufficient detail to guide staff. These procedures should include steps for documenting implementation of invoice controls.*

**Response**

Authority staff has amended its *Contract Administration Manual* to include procedures for documenting implementation of invoice controls. A copy of the revised manual is attached.<sup>4</sup>

**General Response**

The tasks of managing, controlling and oversight of the program remain a challenge for the Authority, as the project continues to evolve, and the hire of additional competent and experienced staff (as was envisaged in the budget and planning) has not been authorized, due to the lack of a State budget, and the subsequent hiring freeze announced by the Governor.

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<sup>3</sup> Contract amendment

<sup>4</sup> Contract Administration Manual



# Footnote #1



**CALIFORNIA  
HIGH-SPEED RAIL  
AUTHORITY**

**BRIEFING: JULY 7 EXECUTIVE/ADMINISTRATIVE COMMITTEE MEETING AGENDA**  
**ITEM #4**

**TO: Chairman Pringle and Authority Board Members**

**FROM: Carrie Pourvahidi, Interim Executive Director**

**DATE: 7/1/2010**

**RE: Board Policies and Procedures Addition**

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## **Background**

In its report of its audit of the Authority, the Bureau of State Audits noted the following, concerning the Authority's business and strategic plans:

*[The Authority] did not have an opportunity, as a body, to discuss or approve the revised business plan issued in December 2009. In fact, members received a copy of the plan only two days before staff submitted it to the Legislature. However, according to the communications director, some members received a draft of the business plan and discussed it with him. Also, as discussed earlier, the Authority has been only minimally involved in creating the strategic plan. Its chair stated that the Authority is ultimately responsible for the program's success or failure. Unless it exercises oversight of plans and activities, however, it risks being unaware of significant issues that could disrupt or delay the program. (Audit Report, pp. 29-30.)*

The Authority indeed has been involved in the development of recent documents, for example twice discussing and editing the Authority's Strategic Plan and reviewing an addendum to the Business Plan.

## **Proposed Language**

In order to clarify the Board's role in the development of key policy, and to respond affirmatively to the recommendation made by the Bureau of State Audits, staff recommends

that the Board's Policies and Procedures be amended by adding a section C, under Article I, as follows:

**C. Responsibilities of the Board**

1. The Authority's key policy documents are the Authority's business plans and strategic plans.
2. The Board is responsible for developing the policy of the Authority, and for the development and approval of the Authority's key policy documents.

**Staff Recommendation**

Staff recommends that the Board approve and adopt the following resolution:

Resolved, that the Board's Policies and Procedures be amended to add, under Article I, the following:

**"C. Responsibilities of the Board**

- "1. The Authority's key policy documents are the Authority's business plans and strategic plans.
- "2. The Board is responsible for developing the policy of the Authority, and for the development and approval of the Authority's key policy documents."

## **Resolution Amending Board Policies and Procedures**

Resolved, that the Board's Policies and Procedures be amended to add, under Article I, the following:

### **"C. Responsibilities of the Board**

"1. The Authority's key policy documents are the Authority's business plans and strategic plans.

"2. The Board is responsible for developing the policy of the Authority, and for the development and approval of the Authority's key policy documents."



## High-Speed Rail Authority

### Board Policies and Procedures

As Amended August 5, 2010

#### Article I – Authority Board

##### A. Members

1. The Authority Board consists of nine members appointed as provided in Public Utilities Code section 185020.

2. Each Board member shall represent the entire state.

##### B. Compensation and Reimbursement

1. Pursuant to state law, Board members receive \$100 per diem, up to a maximum of \$500 per month, for attending to the business of the Authority. “Attending to the business of the Authority” shall consist of the following: attendance at regular and special meetings of the Authority Board, attendance at meetings of Board committees, and attendance at other public meetings convened by the Authority.

2. Authority staff shall note the presence of Board members at such meetings and submit the meeting for compensation for members attending unless asked by the Board member attending not to do so.

3. Members of the Authority shall be reimbursed for their actual travel expenses incurred in attending to the business of the Authority. Claims for reimbursement shall be submitted to a member of the Authority staff designated by the Executive Director for that purpose.

##### C. Responsibilities of the Board

1. The Authority’s key policy documents are the Authority’s business plans and strategic plans.

2. The Board is responsible for developing the policy of the Authority, and for the development and approval of the Authority’s key policy documents.

## Article II – Administration

### A. Board Officers

1. The officers of the Authority Board are a Chairperson and a Vice-Chairperson and any other officers deemed necessary by the board.
2. On or before July 1st of each year the Board shall elect a Chairperson who shall preside at all meetings of the Authority and a Vice Chairperson to preside in the absence of the Chairperson.
3. The Chairperson and Vice Chairperson and any other officers so elected shall hold office from July 1st of the year elected to June 30th of the following year or until their successors are duly elected and qualified.
4. No Board member may hold office as Chairperson for more than two consecutive terms. No Board member may hold office as Vice-Chairperson for more than two consecutive terms.
5. The Chairperson shall have the power to cancel a regularly scheduled Board meeting or to call for new Board meetings, and to set the agenda for Board meetings.
6. The Chairperson shall have the authority to establish committees of the Authority and to establish their responsibilities and membership.
7. In addition to presiding at Board meetings, the Chairperson shall exercise and perform such other powers and duties as may be from time to time assigned to the Chairperson by the Board or prescribed herein. The Chairperson shall decide all questions of order at all meetings of the Board of Directors, subject to the action of a majority of the members.
8. The Chairperson shall act as the primary spokesperson for the Board and representative of the Board at Legislative hearings and meetings. The Chairperson may delegate that role to another board member for a specific purpose, hearing, or meeting.

### B. Chief Executive Officer/Executive Director

1. The Authority's Executive Director is appointed by and serves at the pleasure of the Authority Board as provided in Public Utilities Code section 185024.
2. The Executive Director shall be known as the Authority's Chief Executive Officer. In signing any documents, other than correspondence, he or she shall sign as "Chief Executive Officer and Executive Director."

Any reference to “Chief Executive Officer” in this document or in any other document created by the Authority shall be understood to be a reference to the Executive Director appointed pursuant to Public Utilities Code section 185024.

3. The Chief Executive Officer administers the affairs of the Authority as directed by the Authority Board and, as authorized by the Authority Board, appoints necessary staff to carry out the provisions of the California High-Speed Rail Act and of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.

4. For the sake of clarity, all general delegations of authority to the Chief Executive Officer should be in the form of resolutions.

#### C. Removal of Officers

1. Officers may be removed by the affirmative vote of a majority of the members of the Board.

#### D. Chairperson Pro Tempore

1. In the event of the absence or inability to act of the Chairperson and Vice-Chairperson, the members present at any meeting of the Board, by order entered in the minutes, shall select one of the members to act as Chairperson Pro Tempore, who, while so acting, shall have all of the authority of the Chairperson.

#### E. Policies and Procedures

1. All Board policies shall be adopted through Board action at a scheduled Board meeting.

### Article III – Meetings of Authority Board

#### A. Quorum

1. Five members of the Authority Board constitute a quorum for taking any action by the Authority. (Pub. Util. C. § 185020, subd. (g).)

2. If a quorum is not present during a meeting of the Board, those members who are present may convene as a committee of the whole for the purposes of discussing matters appearing on the agenda for that meeting.

#### B. Bagley-Keene Open Meeting Act

1. Meetings of the Board and of its committees shall be noticed and conducted in compliance with the Bagley-Keene Open Meeting Act (Gov. C. §§11120 et seq.)
2. Members of the public have a right to comment on all items being considered by the Board as provided in the Bagley-Keene Open Meeting Act.
3. All Board members shall keep a copy of the Bagley-Keene Open Meeting Act. The Authority staff will provide a current copy of the Act to each member of the Board at the beginning of the year and to each new member of the Board upon his or her appointment.

#### C. Resolutions and Motions

1. For the sake of clarity, all major Board actions shall be in the form of a resolution. In such cases, a proposed resolution will be presented to the Board for approval, as written or as it may be modified at the meeting. A failure to comply with this provision does not affect the validity of the action taken.

#### D. Consent Calendar

1. In preparing the agenda for any meeting of the Board or of one of its committees, the Executive Director, in consultation with the Chairperson of the Board or of the committee, may designate agenda items to be placed on a consent calendar. Only items that may be approved by a majority of the members present at the meeting and for which a proposed resolution has been prepared may be placed on the consent calendar. In the case of meeting minutes, the draft minutes shall serve the purpose of a resolution.
2. Approval of the consent calendar by a majority of the members present, provided a quorum is present, constitutes approval of all of the items on the consent calendar, including the proposed resolutions.
3. At the meeting of the Board or of the committee, any consent item shall be removed from the consent calendar at the request of any member of the Board or of the committee, or if any member of the public expresses a desire to address the Board or committee concerning that item.

## Article IV – Communications

1. The Chairperson shall act as the primary spokesperson for the Board and representative of the Board at Legislative hearings and meetings. The Chairperson may delegate that role to another board member for a specific purpose, hearing, or meeting.
2. Individual Board members are free to express their views and opinions as long as it is clear that they are expressing their own opinion and not that of the Authority.
3. Each Board member is to make sure that any statement of fact or policy he or she makes on behalf of the Authority is consistent with published facts and adopted policies.
4. All inquiries or suggestions from the Board members shall be directed to the Executive Director for appropriate assignment to staff or contractors. This does not apply to routine requests for information or data questions which can be directed to any staff.
5. To prevent uncertainty and to maintain proper accountability, all direction to contractors shall be through the Executive Director or to a Deputy Director designated by the Executive Director.

## Article V – Board Committees

### A. Establishment of Board Committees

1. Board committees are established by the Chairperson.
2. When a committee is established, the committee's subject matter jurisdiction and period of existence, if any, shall be specified.
3. Members of committees shall be appointed by the Chairperson.
4. Unless otherwise provided by the Board, Board committees serve in an advisory capacity only, make their recommendations to the full Board, and do not provide direction to Authority staff or consultants. Any delegation of power to a committee shall be made by resolution of the full Board. The resolution shall set forth the powers delegated to the committee and the term of existence, if any, of the delegation.

### B. Subject Matter Jurisdiction of Board Committees

1. The subject matter jurisdiction of the Executive/Administrative Committee shall include the following:

- Executive Director employment issues
- Monitoring the Authority's overall activities
- Authority staffing levels
- Procurement, including transparency in solicitation, selection, and reporting
- Administrative policies and procedures, including the operation of the Executive Directors Office
- Reviewing and monitoring proposed legislation affecting the Authority
- Monitoring compliance with federal and state regional planning and programming requirements such as federal and regional transportation programs
- Oversight of all legislative and intergovernmental relations at the federal, state, regional, and local level.
- Compliance with federal and state regional planning and programming requirements such as federal/regional transportation programs
- Coordination and review of legal opinions and advice, reviews / responses from legal counsel regarding Authority business and operations
- Organizational structure and employment Issues
- Human resources and risk management matters
- Business Plan oversight

2. The subject matter jurisdiction of the Operations Committee shall include the following:

- Review of environmental clearance status of all segments (scope, schedule, budget, community issues), including risk analysis



focused on adherence to schedule and delivery of project segments and overall project.

- Review of operating plans (number of trains by segment, station, time of day, day of week, express, local, limited stop, etc), including review of ridership demand forecast against operating plan and required capital investments (for example station tracks, platforms, servicing, etc).
- Review of train options and need for various capital facilities (for example, stations and maintenance facilities).
- Review of development of a phased operating plan that will allow for service start up and growth to full build out of the system.
- Status of discussions with Federal Railroad Administration with respect to shared use issues, equipment specifications, operations, safety, and positive train control, among others.
- Review of efforts to coordinate with existing rail service providers (Caltrain, Caltrans rail, Amtrak, Metrolink, Altamont Corridor Express, Capitol Corridor, Coaster, etc)
- Review of negotiations with freight carriers (BNSF, UPRR).
- Review of consultation and discussion with international high-speed rail operators, equipment manufacturers, system operators, etc.
- Review public feedback as well as communications program results and recommend course corrections as appropriate.
- Review of development of fares, schedules, and service policies

3. The subject matter jurisdiction of the Finance Committee shall include the following:

- Review development of a phased segment-by-segment financial plan that leverages Proposition 1A proceeds with federal American Recovery and Reinvestment Act (ARRA) high-speed rail funds
- Review all funding opportunities beyond Proposition 1A and ARRA, including local and private

- Consideration of a framework for Private sector participation given Proposition 1A and ARRA funding and cash flows
- Review matters of state bonds sales, debt financing, financial operations, and financial reporting
- Review coordination with the Legislative Analyst's Office on annual reports, etc.

#### C. Board Committee Meetings and Quorum

1. The presence of a majority of the members of a Board committee constitutes a quorum.
2. Board members who are not members of a particular committee may attend meetings of that committee as observers only and may not participate in that committee's meeting. (Gov. C. §11122.5, subd. (c)(6); 81 Ops. Cal. Atty. Gen. 156.)

#### Article VI – Conflict of Interest Code

1. The Authority maintains a Conflict of Interest Code. A copy of the Authority's Conflict of Interest Code is attached as Appendix 1.

#### Article VII – Contracts

##### A. Architectural and Engineering Services

1. The Authority's regulations concerning procurement of Architectural and Engineering Services are set forth in Title 21, California Code of Regulations, sections 10000 et seq. Revisions to the regulations are accomplished in accordance with the law pertaining to the adoption of regulations. These regulations are set forth in Appendix 2.

# Footnote #3

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
STD 213 (Rev 01/10)

California High-Speed Rail Authority

|                  |
|------------------|
| AGREEMENT NUMBER |
| HSR06-00001      |
| AMENDMENT NUMBER |
| 1                |

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

**California High-Speed Rail Authority (CHSRA)**

CONTRACTOR'S NAME

**Parsons Brinckerhoff, Quade and Douglas (PB)**

2. The term of this Agreement is: **November 16, 2006** to **June 30, 2013**

3. The maximum amount of this Agreement is: **\$ 199,000,000.00**  
**One Hundred Ninety-nine Million Dollars**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

**The entire contract amendment is contained in full on the following pages**

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto.

## CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

**Parsons Brinckerhoff, Quade and Douglas**

BY (Authorized Signature)

DATE SIGNED (Do not type)

9/10/10

PRINTED NAME AND TITLE OF PERSON SIGNING

**Anthony Daniels, Senior Vice President**

CLIFFORD 6834

ADDRESS

303 2<sup>nd</sup> Street, Suite 700 North  
San Francisco, CA 94107-1317

## STATE OF CALIFORNIA

AGENCY NAME

**California High-Speed Rail Authority**

BY (Authorized Signature)

DATE SIGNED (Do not type)

09/03/10

PRINTED NAME AND TITLE OF PERSON SIGNING

**Roelof van Ark, Chief Executive Director**

ADDRESS

925 L Street, Suite 1425  
Sacramento, CA 95814

California Department of General  
Services Use Only

☒ Exempt per: PCC 10430

## Standard Agreement

The parties hereto mutually agree to amend Contract No. HSR06-00001, and change the contract with the following language:

### Exhibit A SCOPE OF WORK AND DELIVERABLES

2. The services shall be performed on a statewide basis; however, the Consultant will establish an office in Sacramento. *Select Program Management Team (PMT) staff which have been pre-approved by the Authority shall be provided shared office facilities within the Authority's leased space in the Sacramento area. PMT staff co-located with the Authority shall be billed using an audit-adjusted field overhead rate. Office facilities for co-located PMT staff will include utilities (per Authority's lease agreement), efficient office space as per State standards (SAM-Chapter 1300), reasonable reproduction, printing of project related documents and drawings, office supplies, postage, express shipping (Authority's account only), and essential office furniture (work desk, chair, book case). The Authority also agrees to provide state owned desk top computers, when requested in writing and upon availability, connectivity to the Authority's printers, Internet access, and landline desk telephones. All IT related items will be in compliance with State and the Authority's rules and regulations.*

### PROGRAM MANAGEMENT RESPONSIBILITIES

G. Public Education, Participation and Outreach – Assist and implement a public education, participation and outreach plan for a diverse stakeholder group throughout the project area.

*Effective July 1, 2010 the consultant is no longer responsible for public education, participation and outreach.*

### Exhibit B BUDGET DETAIL ANN PAYMENT PROVISIONS

#### COMPENSATION AND PAYMENT

E. The Consultant will receive a 10% fee during the 2006/07 fiscal year (the fee is based on 10% of direct labor and overhead excluding facilities cost of capital). *During subsequent years (2007/08, 2008/09 and 2009/10) the fee will be negotiated annually during the Annual Work Program (AWP) negotiations. Starting the 2010/11 fiscal year onward the AWP negotiations will include, but may not be limited to, consideration of allowable fee and escalation of employee wages. Any allowable escalation on wages shall be applied to actual employee wages based on official Certified Payroll effective first day of the AWP negotiations preceding the beginning of the fiscal year in question or the date of hire for employees hired thereafter.*

~~During the subsequent years the fee will be negotiated annually during the Annual Work Program negotiations.~~

F. The Consultant will receive a 3% fee on Subconsultants costs with the exception of Systra, which the Consultant will not receive a fee.

*Effective July 1, 2010, the Consultant shall not receive a fee on Subconsultants costs.*

All other terms and conditions of the original agreement and any prior amendments shall remain in full force and effect.

Curt Pringle, Chairman  
Tom Umberg, Vice-Chair  
Russell Burns  
David Crane  
Rod Diridon, Sr.\*  
Fran Flores\*  
Richard Katz  
Judge Quentin L. Kopp\*  
Lynn Schenk  
\*past chair



## Footnote #4

ARNOLD SCHWARZENEGGER  
GOVERNOR



### CALIFORNIA HIGH-SPEED RAIL AUTHORITY

#### MEMORANDUM

**To: Shahin Pourvahidi**  
**Director of Contracts**

**Date: September 8, 2010**

**From: Tony Majewski**  
**California High-Speed Rail Authority**

**Subject: Revised Contract Administration Manual**

Enclosed for your review and approval is a copy of the revised draft of the Contract Administration Manual. The revisions, found at pages 27-29 and page 36, add information required by the Bureau of State Audits pursuant to the April 2010 audit report. The audit report requires the High-Speed Rail Authority to implement procedures for ensuring that invoices are properly approved and to include procedures for accountability of ARRA funds.

Approved: \_\_\_\_\_

Date \_\_\_\_\_

Sept 8/10

cc: Carrie Pourvahidi, Chief Deputy Director

# CALIFORNIA HIGH SPEED RAIL AUTHORITY

## CONTRACT ADMINISTRATION MANUAL



Revised August 2010



# CALIFORNIA HIGH SPEED RAIL AUTHORITY

## CONTRACT ADMINISTRATION MANUAL

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## APPENDIX

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# **1. INTRODUCTION**

## **1.1. Purpose of the Contract Managers Handbook**

The purpose of this Contract Managers Handbook (Handbook) is to provide to Authority Contract Managers the guidelines for managing service contracts.

This Handbook includes the steps necessary to request service contracts. Also included are the roles and responsibilities of Contract Managers' in monitoring and managing those contracts, including amending and renewing service contracts. For details on Architectural and Engineering (A&E) contracts, review the Public Contract Code and California Code of Regulations, Title 21, section 10000.

Periodic policy memoranda issued subsequent to the revision date of this Handbook may change some processes and/or requirements. The Handbook should be maintained as current immediately upon receipt of any revisions.

## **1.2. Importance of Contract Management**

Contract Managers play a very important role throughout the contracting process. As representatives of both the California High-Speed Rail Authority (Authority) and the State of California, Contract Managers are responsible for the following:

- developing detailed descriptions of services;
- requesting services;
- ensuring compliance with contract provisions;
- monitoring Contractors' progress to ensure work is on schedule, complete, and acceptable;
- approving products and/or services;
- reviewing invoices; monitoring expenditures;
- authorizing payments;
- requesting timely contract renewals or amendments when necessary; and
- closing out contracts.

Only Authority personnel who have delegated authority and whose names are on file at DGS Office of Legal Services (OLS), may sign contracts. Contract Managers ensure necessary services are procured in accordance with and compliance to State laws and regulations and aid in the successful operation of the total delivery of services.

## **1.3. Authority to Enter Into Contracts**

Authority to enter into contracts comes from two primary sources:

- Delegated Authority from the Department of General Services (DGS), and

- Statutory Authority from State laws (various Codes and the California Constitution (Article XXII)) including but not limited to Public Contract Code (PCC) 10351 and Government Code (GC) 11256.

#### **1.4 Ethics and Conduct**

Ethics are the principles of conduct governing an individual or a group.

Actual or suspected irregularities affecting State funds or operations must be reported to the executive management of the Authority.

Irregularities include fraud, embezzlement, malfeasance, or any other attempt to misuse State resources or interests, either by State employees or others dealing with the State.

Contract Managers shall not accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person (including individuals, firms, corporations, partnerships, associations, other governmental bodies, or agents and representatives for such person) who is doing or seeking to do business of any kind with a Contract Manager's appointing authority. It reasonably could be inferred that the gift was intended to influence a Contract Manager in his/her official duties or was intended as a reward for any official action performed by the Contract Manager.

All favors should be refused courteously. All gifts received shall be returned, unless they are items of no real value that are mass distributed by firms. The return of these gifts can be at the expense of the Authority and may include any needed insurance. Perishables of value should be given to a local charity, with the person who sent the gift being informed of this action. Occasionally, circumstances occur in which payment by others for a meal cannot be avoided without excessive rudeness. Under such circumstances, there would be no violation of this policy as long as the value involved is modest and the situation occurs infrequently.

Contract Managers shall not accept any construction materials or equipment of even nominal value from Contractors. In the event that materials and equipment are offered, Contract Managers shall advise their supervisors immediately of the Contractor's intent to influence a favorable action by the State, regardless that these favors have been refused.

Contract Managers who have been given authority to make outside purchases of materials or services shall not make such purchases from any business entity in which they have financial interests. In addition, employees are prohibited from using their positions in state government to bestow any preferential treatment or benefit to anyone having any family, business, or social relationship to them. Even if Contract Managers have no intention of being unethical, the appearance of questionable or unethical practices are just as detrimental to employees, the Authority, and the State. These practices and appearances shall be avoided.

Contract Managers are subject to disciplinary action for violation of policies.

### **1.5. Conflict of Interest / Incompatible Activities**

Authority policy on conflict of interest is intended to meet the requirements of California's Political Reform Act of 1974, as amended. A conflict of interest occurs when an employee's actions are, or appear to be, for the employee's private advantage or gain or the private advantage or gain of another, rather than the public good.

Authority policy on incompatible activities prohibits the following as activities inconsistent, incompatible, or in conflict with the duties as state officers or employees:

- Using the prestige or influence of the State or the appointing authority;
- Use of State time, facilities, equipment, or supplies; or
- Use of confidential information available by virtue of State employment.

A State agency is prohibited from entering into a contract in which a State officer or employee will engage in any employment or activity funded through a contract, unless the employment or activity is required as a condition of the officer's or employee's regular State employment. In addition, no State agency may contract with a State officer or employee to provide consulting or other services as an independent Contractor.

Authority Contract Managers may not willfully engage in any other employment or activities which are illegal; which are or give the appearance of being incompatible or in conflict with their profession, the Authority, or the State; or have an adverse effect on the confidence of the public in the integrity of the government.



## **2. REQUESTING A SERVICE CONTRACT**

### **2.1 Overview**

Before the service contracting out process begins, there are several considerations to be addressed. First, are there materials and/or commodities involved in the acquisition of service? Second, are California Labor Code (LC) prevailing wages involved in the acquisition of service labor? Third, is it a defined emergency situation? These questions are considered and answered before proceeding with requesting a service contract.

### **2.2 Materials vs. Services**

Contract Managers must accurately determine the proper process for procurement of a commodity. If 50 percent or more of the total expenditure is for service and labor, as opposed to the product, then a service contract must be written. In those cases where the product is 50 percent or more of the total expenditure, a purchase order must be written.

### **2.3 All Other Contracts**

A wide variety of contracts (non-emergency) are used commonly to obtain commercial services, public works, maintenance and repairs, equipment rental, consultant/personal services, interagency agreements, information technology services, and right of way services. For work/services identified as repetitive in nature, it may be appropriate to write two or three year service contracts.

### **2.4 Service Contract Requests**

Upon determining the need for a service contract, it is necessary to be knowledgeable of the steps and time frames required to process contracts. It is essential to allow time for the following:

- Determining if there is an existing Master Services Agreement (MSA), IA, or service contract already in effect for desired services;
- Preparation of a clear, specific, and detailed scope of work;
- Estimation of the amount of the contract and identification of the source fund. (i.e. must ensure funds are available);
- Completion of the solicitation process, which may take between 2-3 months from receipt of contract request to contract execution, depending on the applicable method of award;
- Ensuring all parties understand the provisions of the contract prior to contract execution;
- Finalization and execution of contract; and
- Authorizing the Contractor to begin work.

## **2.5 Defining Needed Services**

When a service is needed, Contract Managers must identify if the need is for a continuation of existing essential services or acquisition of new and/or unique services. Contract Managers must consider:

- The nature of the services;
- What types of services are needed;
- How necessary are they;
- When are they needed;
- If one-time or on-going services;
- Routine or extraordinary/unique;
- Existing or new service;
- Thorough Scope of Work (SOW);
- Internal procedures of requesting services;
- Possible and probable sources for services;
- Justifications; and
- Whose and what approvals are needed.

## **2.6 Estimated Process Times for Service Contracts**

Many factors can affect the processing time for executing a contract. Depending on the type of contract, there are advertising requirements, audit reviews, legal reviews, and DGS reviews. Completeness of the package including the scope of work and any prevailing wage considerations are also factors.

## **2.7 Preparing the Service Contract Request Package**

Before preparing contract requests, get as much general information as possible to determine required services. Call some contractors and ask how they invoice for services, e.g., hourly, lump sum, each time a service is performed, etc. Find out about surcharges in special situations. Determine if contractors provide other types of services in conjunction with the service desired and if so, whether those services are included in the costs or involve additional charges. Obtain as much information as is necessary to write clear and precise specifications in service contract requests. Be sure to include in the package a complete scope of work outlining the Authority and the contractor's responsibilities and all special provisions for the work/services needed

## **2.8 Civil Service Consideration**

It is the express responsibility of each person who processes service contracts to know the statutory authority under which contracting is permitted. The State Constitution established requirements that civil service employees perform the work of the State. Therefore, the Authority must have the "authority" to enter into a service or consultant service contract before it

can be executed. The Government Code and the Public Contract Code specify under what conditions contracting is permitted.

Contracting is permissible under GC 19130(a) when cost savings are achieved through personal services, but requires that a cost analysis be done, and approved by State Personnel Board. Savings generated through cost-savings based personal services contracting must justify the size and duration of the contracting agreement. To do so, these contracts are required to meet one of the following criteria:

- Achieve a savings of 10% or more compared to the cost of performing the same function within the civil service over the duration of the contract; or
- Achieve a savings of at least \$50,000, in terms of 1988 dollars, per year compared to the cost of performing the same function within the civil service over the duration of the contract, provided the savings equals at least 5% of the comparable civil service cost.

The savings requirements may be met on an overall, rather than a year-by-year, basis.

## **2.9 Disabled Veteran Business Enterprise (DVBE) Goals / Small Business Goals / Disadvantaged Business Enterprise (DBE) Participation.**

Certain businesses are eligible to be certified as a DVBE and a Small Business. Firms interested in certification as a DVBE or Small Business should contact the DGS Procurement Division.

The State of California currently has a goal to contract at least 25 percent of contract dollars with "certified" small business and 3 percent with DVBE firms. The Department also strives to increase the level of participation of disadvantaged businesses in all federal contracting activities.

Contract Managers have primary responsibility for setting DVBE Goals and achieving DBE participation. Non-competitively bid contracts and non-public agency contracts also are subject to the same goals.

When setting goals, Contract Managers should evaluate:

- The type of work to be performed;
- Items of work to be provided (materials, equipment, supplies, or services); and
- Availability of subcontractors in the area where the work will be performed (Civil Rights generally recognizes a minimum of three (3) certified firms within 100 miles of the project to indicate sufficient subcontractor capability).

Subcontractors must provide or perform a separate and distinct element of work that will be used during the term of the contract to fulfill the contract requirements.

If contracts are funded by state or state/Local funds, Contract Managers set goals for DVBE subcontractor participation. If contracts are wholly or partially funded with federal funds, Contract Managers set percentages for DBE subcontractor participation. Goals may be set at less than or greater than (even up to 100%) the annual goal established by the Department for a specific solicitation, project, or contract.

Currently, there is no race-conscious DBE program that sets specific DBE contract participation goals that prime Contractors are required to meet or demonstrate Good Faith Efforts (GFE) to the satisfaction of the Authority in order to be awarded contracts as responsive and responsible bidders. However, we still have an obligation to the DBE community to try to meet the overall statewide DBE goal of 10.5 percent for federally funded contracts. Contract Managers are strongly encouraged to set DBE Participation Percentages on contracts that have DBE subcontracting opportunities.

### 3. THE CONTRACTING OUT PROCESS

#### 3.1 Scope of Work

Clear and concise Scopes of Work (SOWs) are critical elements of service contracts. The SOWs must be organized in a logical manner. Contract Managers, in cooperation with executive management, are most knowledgeable about the details of services needed and what specific details SOWs must include.

Contract Managers should write a SOW in the order one would expect the work/services to be done. They should specify location of work, hours (if applicable), timelines and dates for deliverables and work assignments. Work details should be sorted by similar actions or requirements and should clearly define roles and responsibilities of Contractors and the Authority. Misinterpretations of abbreviations, acronyms, and jargon should be avoided by completely spelling out terms the first time and not using in-house jargon. List all licenses, certificates, and /or specialized training that is required for the work/services.

Any contract is only as good as its written SOW. The SOWs must contain all technical provisions necessary for proper and satisfactory completion of the contracted work/service. In order to obtain the end result desired, SOWs must be as detailed and specific as possible about each party's responsibilities, including, but not limited to, specifications, staffing, coordination, deliverables, progress reports, evaluations and acceptance. Contract Managers should write SOWs to indicate what qualifications and licenses are required to perform the work and to express when, where, and how the work/service is to be performed.

Contract Managers can also refer to SOWs of existing contracts for assistance. If a contract is being renewed, for example, and the existing SOW serves all the State's needs, then there is no need to reinvent the wheel.

Consequences of poorly written SOWs include, but are not limited to:

- Not getting all the needed work/services. Contractors cannot perform work not specified in contracts;
- Confusion. Using different names (acronyms, abbreviations, etc.) for the same thing or stating the same requirement in different places within the SOW may create an assumption of different requirements;
- Higher bid prices;
- Bid protests;
- Cancellation and delays of solicitations; and
- Need for solicitation addenda or contract amendments.

### **3.2 Preliminary Steps**

Once a service contract request is approved by executive management, the contracting process officially begins. The process includes the following:

- Determination of solicitation method;
- Development of a solicitation package and proposed contract;
- Contract Manager approval of solicitation package and proposed contract;
- Legal review;
- Advertisement in the California State Contracts Register;
- Bid opening;
- Contract award;
- Preparation of written contract;
- Request for contractor signature; and
- Distribution of the contract.

### **3.3 Review and Approval**

Contract Managers carefully must review every page of the contract package. This is a crucial step in ensuring that the contracts/agreements serve the intended purposes and needs of Contract Managers. Additionally, this reduces chances of having to write solicitation addenda and re-advertise for the same request, which increase the time needed to award a contract and start work.

Under no circumstances is any part of a solicitation package, in draft or final form, to be released prior to publication in the CSCR. To do so would give the appearance of giving a competitive edge or unfair advantage, and would result in having to restart the entire advertising and bidding process.

### **3.4 Solicitation and Award of Contracts**

At least three competitive bids or proposals shall be secured when possible. Contracts shall be awarded to responsive, responsible bidders or proposers who:

- Offer the lowest price; or
- Receive the highest score in the secondary RFP award method.

### **3.5 Locating Contractors**

The more effort that is put into soliciting businesses to participate, the better the chance for a variety of bids. The more bidders there are available, the better the chance that the job will be well done at a competitive price. While for non-A&E contracts the only advertising the Authority is legally required to do is in the CSCR, Contract Managers should develop a list of possible bidders for the work/service requested.



Contract Managers should not rely solely upon the CSCR for a listing of bidders. Contract Managers should reach out to other sources besides the CSCR, which include, but are not limited to, the following:

- DGS Office of Small Business and DVBE;
- Other state agencies;
- Contractors already providing similar services;
- Telephone directories;
- Trade and focus papers/union papers; and
- Job fairs.

When services are required for contract amounts below \$5,000, Contract Managers should conduct market surveys of vendors/contractors and have them submit unsealed price quotes/bids. There is no limit to the number of vendors that may be solicited. This process may be done by telephone, fax, or in writing.

No solicitations may be written to exclude any prospective bidder.

### **3.6 Invitation for Price Quote (IFPQ) – Simplified Small Business (SB), Micro-Businesses (MB), and Disabled Veteran Business Enterprise (DVBE) Award Process, aka Two-Quote Process.**

State agencies may contract with certified SBs, MBs, and/or DVBEs for the acquisition of goods, services, and IT greater than \$5,000 and less than \$100,000, if funded by state and local funds only, without following the normal requirements for advertising as long as price quotes are received from two or more certified SBs, including MBs; or two or more certified DVBEs. State agencies also may contract for construction work greater than \$5,000 and less than \$131,000 if using these criteria.

If two (2) or more quotes are not received from certified SBs, including MBs, and/or DVBEs, staff may initiate a formal solicitation or extend the period for receipt of quotes until two or more quotes are received. If two quotes are not secured, consideration should be given to the availability of certified SB/MB/DVBE firms to provide the requested service and the program's needs, including any time constraints.

If the service is to be advertised in the CSCR, the IFPQ contract number will be canceled and a new contract number for the formal solicitation will be assigned for the same request. The work/service then will be advertised and awarded following formal IFB or RFP procedures.

### **3.7 Questions and Answers / Site Inspections**

Even when Contract Managers write SOWs that are clear, concise, and complete, Contractors still may have questions about the work/service being advertised. Administrative questions can be answered informally by Contract Managers. Contract Managers can incorporate into solicitations a process for logically and uniformly answering technical questions from potential bidders. To give one bidder pertinent technical information that is not provided to all potential bidders may be grounds for protest. In order for the Q&As to be of use to potential bidders, they must be provided in a reasonable amount of time prior to the bid submittal deadline date and time.

Written responses to all questions should be collectively compiled and filed for each individual or firm who downloaded the solicitation from the Internet or who requested it by calling the recorded bid line. Hard copy (paper) responses should be sent by mail and an electronic version should be uploaded to the Authority's web site.

Meetings should be conducted when it is not possible to clearly convey the description and specifications of the required work/service in a written solicitation. Contract Managers should be prepared to answer questions about prevailing wage and apprenticeship requirements at these meetings.

Site inspections are held no less than two days after the last day the advertisement appears in the CSCR and at least five days prior to bid submittal deadline to allow all Q&As to be distributed to all interested Contractors.

NOTE: If a bid/proposal is received from an unqualified bidder/proposer (one who did not attend a mandatory site inspection) the unopened bid will be returned to the unqualified bidder indicating why it is being returned.

In the case of a re-bid situation with a mandatory site inspection, attendance is mandatory even though a potential bidder attended the first site inspection.

### **3.8 Bid Preference and Incentive Programs**

Government Code 14835 provides for a 5 percent preference to be given to bidders who qualify as small businesses (SBs). If a solicitation results in an SB submitting a bid, the SB is awarded the solicitation if their bid is evaluated as lower after subtracting 5% of the overall lowest responsible bidder's amount from the SB bid amount. Billing and payment are still at the SB submitted bid amount. Contract Managers are responsible for sharing information with SBs about preferences certified SBs are given on all competitively bid contracts. The preferences are to assist and encourage SBs in doing business with the State. However, Contract Managers must be careful not to divulge information about a contract currently out to bid, so as not to give an unfair advantage to a particular bidder.

Military and Veterans Code 999.5 provides for an incentive to be given to bidders who qualify as DVBEs. If a solicitation results in an DVBE submitting a bid, the DVBE is awarded the solicitation if their bid is evaluated as lower after subtracting DVBE Incentive Percentage (listed below) of the overall lowest responsible bidders amount from the DVBE bid amount. The incentive amount for awards based on low price will vary in conjunction with the percentage of DVBE participation. Unless a table that replaces the one below is expressly established elsewhere within a solicitation, the following percentages will apply for awards based on low price.

Confirmed DVBE Participation of DVBE Incentive:

- Over 3 percent 10 percent
- 3 percent 7 percent
- 2 percent up to 3 percent 5 percent
- 1 percent up to 2 percent 3 percent

Billing and payment are still at the DVBE submitted bid amount. The following are other considerations concerning the DVBE:

- Evaluations of DVBE incentives occur after SB preferences and before other preferences;
- DVBE incentives cannot displace a certified SB for contract award; and
- DVBE participation is a firm commitment by bidders to use the DVBEs identified in their bids.

### **3.9 Non-Competitively Bid (NCB) Contracts**

Non-competitively bid transactions (NCBs) are defined as procurements or contracts for goods and or services where only a single business enterprise is afforded the opportunity to offer the State a price for the specified goods and or services without having to obtain competitive bids or proposals. NCBs were formerly referred to as sole-source or single-source contracts.

Contract Managers must provide written justification for NCB requests not exempt from advertising under statute or DGS policy. Justification should include detailed information on the circumstances surrounding the need for an NCB and explanation why the requested contractor is the only one that can perform the work. Justification must also explain any critical failures resulting from competitive bidding.

Contract Managers must submit the NCB contract justification to DGS for approval. DGS may grant exemption from advertising to individual state agencies for specified types of contracts.

### **3.10 Miscellaneous**

Contract Managers should inform prospective bidders/contractors of the following:

- The State cannot pay in advance;
- It may take up to six weeks after invoice receipt before payment is made (unless the contractor is a certified SB/DVBE); and
- The payment process may be expedited to take advantage of discounts of at least one-half percent if noted on the invoice.

State contractors and recipients of state grants must maintain and certify to a “drug-free workplace.” The Drug-Free Workplace Certification clause is mandatory and included in all contracts. The Authority may cancel contracts or grants if contractors or grantees fail to comply with the requirements. When at job sites, Contract Managers should look for signs of workers being under the influence. For the protection and safety of all parties, immediately bring to the attention of the contractor’s project representative or supervisor any workers suspected of being under the influence.

## **4. AUTHORIZATION TO START WORK**

### **4.1 Execution of Contracts**

A contract is considered executed after both the contractor and the Authority's sign the Standard Agreement, STD. 213. The Authority sends a letter to the contractor to announce contract execution; a copy is sent to the Contract Manager. The letter notes that the contractor is not authorized to commence work until it has been notified by the State's designated Contract Manager to begin work. It is a Contract Manager's responsibility to authorize the start of work in writing.

In most instances, Contract Managers initially notify contractors verbally to begin work. Verbal notification to contractors must be followed up in writing and can either be mailed, emailed, faxed, or hand-carried to contractors. Contract Managers must put a copy of the written notification in the contract file. If a Contract Manager authorizes a contractor to start work before the contract is executed, the responsible Contract Manager may be subject to disciplinary action.

Contractors who begin work before the effective date or contract execution date do so at their own risk. Accounting cannot process invoices without an executed contract; therefore, contractors may be required to file a claim with the California Victims Compensation and Government Claims Board (VCGCB) for payment of work done without an executed contract. Responsible Contract Managers are required to appear before the VCGCB to explain why proper contracting practices were not followed. If the VCGCB rules in favor of the contractor, the Authority may be required to pay an additional administrative fee of 15 percent of the claim amount for hearing the claim.

Contract Manager's must never authorize work after a contract expires.

### **4.2 Contract Termination**

Termination is an extreme remedy for resolving contractor performance problems or changed government circumstances. If Contract Managers contemplate contract termination, they should contact the Authority's executive management for guidance. Executive managers of Authority are the only ones authorized to terminate or cancel a contract.

Letters inform contractors that if identified problems are not corrected or if performance is not satisfactorily improved, the Authority will terminate the contract "immediately," then have the work finished by another contractor and hold the original contractor liable for any additional costs.

Termination may occur based on one of three ways:

1. For Cause or Default – the Authority may exercise its right to terminate contracts because of a contractors' actual or anticipated failure to perform its contractual obligations. For example, the contractor breaches any material term or condition of the contract, or fails to perform or fulfill any material obligation. A court proceeding can overturn a termination by default or vice versa with the contractor ending up with full recovery of contract amount;
2. For Convenience (commonly referred to as "Without Cause") – the Authority can terminate a contract in the event of an unforeseen public emergency, lack of funding, or a change of circumstances; or
3. By Mutual Agreement – When both parties agree to terminate the contract due to insolvency of the contractor or disputes between the contractor and the Authority, the Authority will prepare a mutual release agreement freeing both parties from any further obligations of performance.

If a Contract Managers is uncertain whether there is sufficient cause to terminate a contract and assess damages, a legal opinion may be requested.

The Authority's legal representative may, after reviewing a case, make recommendations for appropriate settlements of subject contracts and, if appropriate, outline the steps to be taken. Contract Managers must not authorize payment to contractors for any work not performed satisfactorily.

#### **4.3 Steps for Placing Contractors In Default**

When contracts are terminated due to unsatisfactory performance, contractors may be placed in default by progressing through the following steps:

1. Contract Managers notify the contractor in writing of unsatisfactory performance;
2. If performance does not improve, Contract Managers request executive management declare the contractor to be in default;
3. The Authority notifies the contractors in writing that contracts are canceled;
4. The Authority sends copies of termination letters to the Contract Manager and accounting;
5. The Contract Manager enters default information into the default database to note that the defaulted contractor is ineligible for award of future Authority contracts;
6. After work has been awarded to another contractor, the Contract Manager sends a memo to accounting asking it to bill the defaulted contractor for the difference; and
7. When contractor pays the bill, accounting notifies the Authority and the contractor is taken out of default.

Contract Managers cannot make a contract termination request, if poor service is being received from contractors, without first formally informing them of work performance expectations. The Authority will not authorize termination and securing services of another contractor until Contract Managers take proper steps for handling non-performance of contract services.

## **5. CONTRACT AMENDMENTS AND RENEWALS**

### **5.1 Overview**

When contracts are written, every effort should be made to prepare the scope of work comprehensively enough to provide all needed services. If there are needs to cover contingencies, provisions providing flexibility should be built into contracts. If unanticipated events occur, contracts may usually be amended.

Service contracts are often for services that will be required for a long term; however, since contracts usually are not written for more than 36 months, they need to be renewed to allow for the needed services to continue uninterrupted.

Neither amendments nor renewals occur automatically. Contract Managers must monitor current contracts while keeping in mind needs for amendments or renewals, as well as the processing times it takes for their execution.

### **5.2 Amendments**

Amendments are formal modifications to contracts. Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. Amendments may be used for, but is not limited to:

- Extending contract periods (terms);
- Adding unforeseen work/services and moneys;
- Both extending terms and adding unforeseen work/services and moneys; and
- Assignment of contracts.

Contract Managers must notify the Authority executive management as soon as the need for amendments becomes apparent.

Amendments requiring (DGS) approval must be submitted to DGS prior to the termination date. Contract Managers cannot authorize additional work or expenses until an amendment is executed and accounting cannot legally pay for any work performed under intended amendments before execution of the amendment.

Contract amendments should not materially alter the fundamental objective of the SOW of the original contract. Major changes must be accomplished by new contracts using required bidding and contract award procedures. Care must be taken to ensure that amendments do not contradict information in original contracts and that all needed changes are specified. Amendments are subject to the same reviews and justifications as original contracts.



### **5.3 Renewals**

Renewals are new contracts for necessary services that must continue and are currently are being provided under contracts set to expire. It is not appropriate to amend contracts year-by-year to extend the performance period. These contracts must be renewed.

Renewals of contracts follow the same process and timeframes as original contracts. Contracts awarded on annual or multi-year bases should be rebid prior to expiration of current contracts. Contract Managers are responsible for monitoring contract expiration dates. Renewal requests must be prepared in a timely fashion to ensure that no lapse of necessary service occurs.

## **6 THE CONTRACT MANAGER'S ROLE**

### **6.1 Overview**

Contract Managers manage and monitor contracts. Contract Managers are authorized representatives of the State of California and responsible for the administration of contracts and monitoring/documenting contractor performance.

Contract Managers:

- Perform administrative tasks ranging from requesting contract services to authorizing final payment for satisfactorily completed services to maintaining contract documentation;
- Make timely requests for contract amendments or renewals, if necessary;
- Play a critical role in defining, monitoring, and evaluating the performance of contractors from commencement of work to completion of the evaluation;
- Are authorized Authority representatives when dealing with contractors;
- Act as liaisons with contractors; and
- Decide whether or not the State is getting fair value for taxpayers' money paid for contract services.

### **6.2 Limits on Authority**

Contract Managers are NOT authorized to take the following actions:

- Instruct contractors to start work before contracts are executed;
- Change contract descriptions or Scopes of Work after contract execution;
- Direct contractors to do work not specifically described in their contracts;
- Sign contracts;
- Sign any contractor's contract form;
- Cancel or terminate contracts; or
- Authorize payment to contractors for any work not performed or not performed satisfactorily.

Additionally, Contract Managers are NOT authorized to take the following actions without an executed and approved contract amendment in place:

- Extend time period (term) of contracts;
- Reduce, expand, add, or substitute work/projects, unless specifically authorized in the provisions and conditions of a contract; or
- Allow Contractors to incur costs over agreed limit set in contracts.

Contract Managers guilty of malfeasance may be convicted of misdemeanors or felonies and held liable personally for damages if convicted.

### **6.3 Responsibilities**

Contractor Managers have many responsibilities including making contract requests and obtaining all required approvals for contracts from executive management. Contract Managers should submit requests with clear, concise, and detailed descriptions of work to be performed and include all needed approval names with dated signatures, all required justifications, accurate, complete funding and coding information, and lists of potential bidders.

Contract Managers are responsible for reviewing draft contracts and solicitations for accuracy and completeness of SOWs, all provisions, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and end products. They must also ensure that funding is available and encumbrance conforms to Authority policy.

Contract Managers are responsible for:

- Notifying contractors in writing to begin work;
- Holding pre-job conferences with contractors and subcontractors;
- Maintaining all documentation in “working” contract files;
- Monitoring contractor progress for compliance with all contract provisions;
- Ensuring compliance with all federal, state, and special regulations;
- Monitoring contractors for use of subcontractors and suppliers;
- Monitoring contractor performance;
- Ensuring that work proceeds on schedule and will be completed successfully before the contract expires;
- Reviewing and approving invoices for payment;
- Monitoring contract expenditures to ensure sufficient funding is available to pay for all services rendered as required in the contract;
- Monitoring contractors’ insurance terms and effective dates;
- Monitoring contractors’ licenses for expiration dates;
- Monitoring expenditures and timely approving invoices for payments;
- Notifying appropriate personnel of equipment purchases, if applicable, and ensuring property is tagged and inventoried before approving cost reimbursement;
- Monitoring use of DVBE, DBE, and Small Business subcontractors, and/or preference program participation per approved goal or percentage attainment;
- Monitoring invoices or billing statements for DVBE goal or DBE percentage attainment;
- Submitting approved invoices to accounting in time to avoid late payment interest penalties;

- Contacting accounting throughout the term of the contracts to ensure encumbrances have not expired and sufficient funds are available to pay for rendered services and for expected invoices in any given fiscal year;
- Issuing Invoice Dispute Notifications, STD. 209(s), when invoice disputes cannot be resolved; and
- Requesting timely amendments, including pre-approvals (NCB, etc.), renewals, or new contracts as required and within sufficient time to prevent any lapses in services.

Contract Managers are also responsible for management of contract records of all contract activities including:

- Contract closeout;
- Approval for final products/services;
- Verification that all contract requirements are fulfilled before approving final invoice; and
- Completion of contractor evaluations, STD. 4(s), for consultant service contracts of \$5,000 or more.

## **7 MONITORING CONTRACT ACTIVITIES**

### **7.1 Monitoring Responsibilities**

The primary responsibility of Contract Managers is to monitor the progress of work to ensure contracted services are performed according to the quality, quantity, and manner specified in the agreement. Contract Managers must ensure that work proceeds on schedule and is completed and accepted by the Authority before contracts expire and services are paid. Useful tools to help Contract Managers monitor various aspects of contracts are calendars or timelines for each contract for performance objectives, license and insurance expirations, and appropriate time to request renewals.

Contract Managers must do the following for each contract:

- Ensure that all federal or special regulations are adhered to;
- Review progress reports and interim products for compliance with contract specifications, objectives and timeframes;
- Review and approve invoices to substantiate expenditures for work performed;
- Monitor DVBE, DBE, Small Business, or preference program participation per approved goal attainment;
- Maintain documentation of all activity;
- Maintain running totals of charges and costs;
- Notify appropriate personnel, if applicable, of any equipment purchases and ensure that property is tagged and inventoried prior to approving reimbursement of purchase costs;
- Determine the need for contract amendment or renewal and request any amendment or renewal with sufficient time to process and execute an amendment or renewal before original contract expires;
- Request an "assignment of contract" (transfer of contractual rights from one contractor to another) whenever the contracted firm is bought out, merged, or sold to another company;
- Verify contractor has fulfilled all requirements of the contract;
- Identify final invoice; approve as appropriate; and forward to accounting for payment; and
- Complete Evaluation of Contractor, STD. 4, if applicable.

### **7.2 Funding and Expenditures**

Most encumbered funds are available for the current FY plus two (2) additional FYs, as long as the contract had not expired when the services were performed. (Example: Funds encumbered in FY 06/07 are still available in FY 08/09 for any late invoices for services performed during the life of the contract. However, funds encumbered for that contract are not available for invoices for work done after the expiration of that contract.)

Contract Managers should track dollars available versus dollars spent, as well as the type of contract and the method of payment. Issues to consider include, but are not limited to:

- Number of Expenditure Authorizations (EAs) being used in contracts;
- Number of FYs covered in contracts, and
- Methods of payment (hourly, monthly, per item, per milestone, by task order, and/or lump sum).

Contract Managers must:

- Review encumbrance information in contracts to ensure all figures are correct and the encumbrance is sufficient for the current fiscal year (FY). If funds are not encumbered by June 30 (end of the FY), most, but not all, funds revert back and are no longer available;
- Monitor expenditures on all contracts;
- Maintain constant status of available contract encumbrances balances by keeping a running total of charges and costs for each contract on a spreadsheet. (The type of contract and method of payment should be kept in mind when developing the contract monitoring spreadsheet.)
- Track estimated and actual hours worked and any applicable direct costs; and
- Prepare spreadsheets or ledgers to maintain this "tally" when contracts are awarded.

A spreadsheet may be simple or complex, depending on the complexity of the contract. At a minimum, the following information should be reflected on a spreadsheet:

- Contractor's name;
- Contract number;
- Amount of contract and description of services; and
- Total amount of contract less each invoice approved for payment.
- Items to be specifically invoiced, i.e., rate per hour, time, materials, travel, DVBE/DBE/SB requirements.

As deductions from a contract's total encumbrance are made, it will become apparent if an amendment to add funding will be needed prior to contract expiration, or that payment has been made for things not provided for in the contract.

### **7.3 Fiscal Year (FY) Funding Split**

Contract Managers must monitor encumbrances for each FY closely. This task may be very detailed if the contract involves more than one FY or expenditure authorization (EA). Contract Managers should:

- Ensure an encumbrance is established for the work/services being provided in the appropriate FY;
- Notify Budgets, Resource Management, or Accounting Encumbrance units accordingly if problems occur; and
- Move encumbrance from one EA into another EA near the end of the FY, if needed.

### **7.4 Receiving and Reviewing Invoices**

#### Service Contracts

Payments to contractors for consulting services and procurement contracts must be consistent with Contract Exhibit B provisions and services provided. When invoices are received, compare them with the contract spreadsheet. Review invoices for all required information, including any supporting documentation necessary. Every effort should be made to pay all allowable costs by working with contractors for clarification or backup documentation of billed items. The State cannot pay for services not yet received.

Copies of all invoices (annotated, as needed) and all back-up documentation must be retained in Contract Managers' contract files. If an electronic file is being used, an electronic image (e.g., pdf) should be made of the invoice information. At a minimum, enter invoice information in an electronic document. Contract Managers should reconcile, at least quarterly, a contract balance with accounting.

Contract Managers should request that contractors submit invoices in a timely fashion and as provided in the contract and should promptly review and forward invoices to accounting for payment within 15 days of receipt. Contractors should submit to Contract Managers invoices on letterhead stationary or invoice form.

All invoices should contain:

- Contractor's name, address, and telephone number;
- Invoice number;
- Invoice date;
- Contract number;
- Invoice period, specified with beginning and ending dates. The beginning date must not be sooner than the Notice to Proceed/Start Work date for the contract, nor within any previous billing dates;
- Description of services or work being billed for;

- Charges, itemized, if applicable, for each expenditure authorization, each milestone or task order, each subcontractor, including identification of DVBE/DBE firm(s), to show direct labor costs, and to show other direct cost
- Summary of total dollar amount billed to date, current month and previous month;
- Total dollar amount billed with invoice;
- Total amount due with this invoice; and
- Discount, if offered by contractor.

In reviewing invoices, Contract Managers must:

- Verify there are no duplicates of any previously paid invoices;
- Check for accuracy, timeliness, and compliance with cost and payment terms of contracts. Cost rates are limited to those annotated in the contract or Cost Proposal (where applicable);
- Check for mathematical accuracy;
- Ensure personnel shown match those listed in the cost proposal and/or contract;
- Conduct a technical evaluation of each invoice, as necessary, to determine the reasonableness of charges and hours worked. The evaluation is based upon the contract deliverables;
- Review DVBE/DBE/SB requirements of the contract and determine if invoices reflect proper percentages and dollar amounts for those subcontractors; and
- Ensure receipt of progress report, if required by the contract.

Contract Managers must verify and approve all invoices before submitting them to accounting. Contract Manager approval signatures certify that all charges are appropriate and all work was satisfactorily performed according to the provisions of the contracts.

## **7.5 Timely Invoice Processing and Invoice Disputes**

### **Service Contracts**

Date-stamp all invoices upon receipt. Begin the review and payment process immediately. In accordance with the Prompt Payment Act, the State has 45 calendar days to issue payment on undisputed invoices received – 15 calendar days for the Contract Manager to process and approve; 15 calendar days for accounting to audit and process; and 15 calendar days for the State Controller's Office (SCO), in turn, to issue the payment warrant. Failure to meet either of these requirements will result in interest being assessed (as a late payment penalty). If interest were assessed due to the Authority's failure to submit the invoice to SCO, the appropriate interest would be charged to the Departmental division responsible for the delay of payment.

Invoices from certified SBs, MBs, and DVBEs are handled essentially the same as other invoices. However, if a contractor is currently certified with DGS' OSDS, the State shall pay to the contractor a late payment penalty of 0.25 percent of the amount due, per calendar day, from



the required payment date. The Authority does have, however, the same 15-calendar day timeframe to dispute invoices. Contract Managers shall promptly respond to all subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

If Contractors offer discounts for prompt payment of invoices, Contract Managers should make concerted efforts to take advantage of the discounts.

If a Contract Manager disputes any portion of the invoice and decides to withhold payment on that part of the invoice (for example, the work performed was not satisfactory or not performed at all), the Contract Manager must notify the contractor in writing about the item(s) in dispute, the monetary amount of the dispute, and what actions, if any, are required to resolve the dispute. Payment to Contractors should not be authorized if work has not been completed to a Contract Manager's satisfaction.

Contract Managers cannot withhold the entire invoice amount, but only the amount for items being disputed. Use Invoice Dispute Notifications STD. 209 as notices of invoice disputes.

Timely filing of Invoice Dispute Notifications, STD. 209, will "stop the clock" on processing invoices when there are disputes. An invoice dispute effectively interrupts the required payment date for prompt payment. Vendors must be notified of an invoice dispute within 15 working days of invoice receipt or delivery of the goods or services, whichever is later. Failure to notify Contractors, in writing, of invoice disputes within the required time frame will cause invoices to be handled as undisputed invoices and thus may cause the State to be assessed interest for any charges not automatically paid within the required 45 calendar days.

Contract Managers shall approve invoices, if all information is correct and accounted for, by signing, dating, and writing "approved for payment", and contract number on invoices. Upon approval of invoices, Contract Managers prepare three invoice packages. They send two to accounting, one for processing to the SCO who issues payment warrants to contractors, and one for accounting's records. Contract Managers keep the third one in the contract files.

Invoice packages include the following:

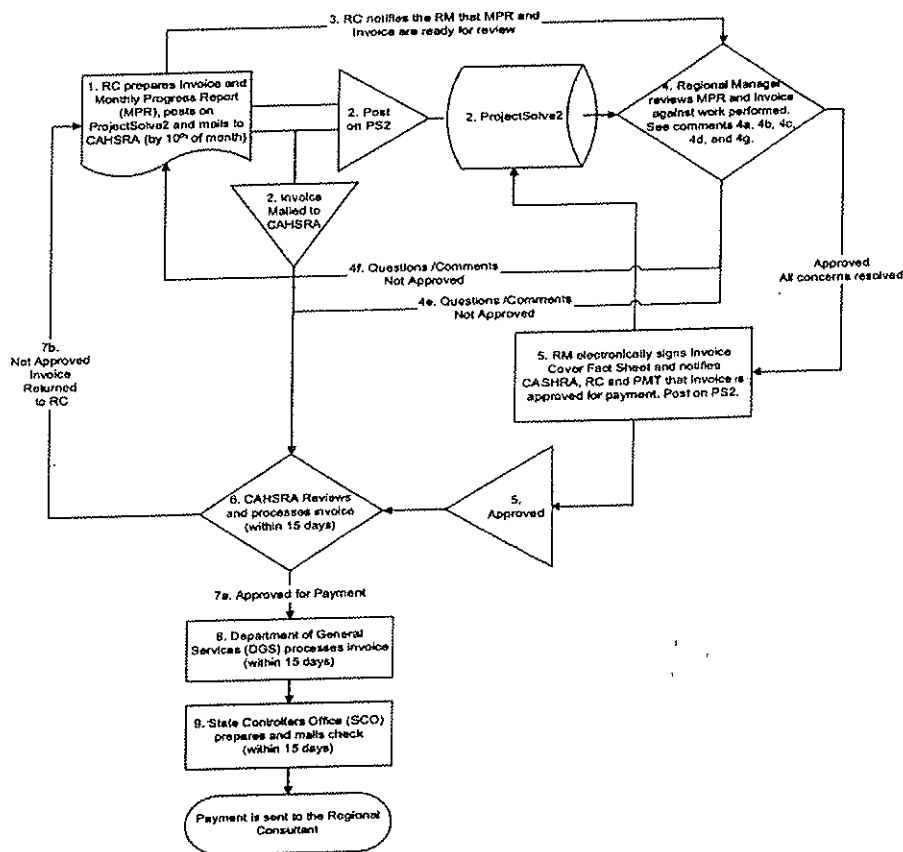
- Receiving records complete with all requested information, including proper cost information, object code, expenditure authorization (EA) and funding FY), and legible name and phone number information for accounting;
- Invoices with original signatures of Contract Managers and contractors. If the dollar amount being approved differs from the invoiced amount, Contract Managers should indicate the changes on the invoice. A notation, such as "Approval as indicated," should be written above Contract Manager's signatures; and
- Copies of written notices to contractor if invoices are not being paid in full as submitted.

### Architectural and Engineering Contracts

The California High-Speed Rail Authority's general policies and procedures for architectural and engineering contracts, including selection criteria and processes, qualifications, negotiation and amendment processes and other provisions, are found in California Code of Regulations, Title 21, Division 6, Chapter 1. The procedures below address the processes for invoice review and approval, including review and approval of the monthly progress reports as part of invoices submitted by contractors.

Invoices submitted for architectural and engineering (A&E) contracts, including invoices from Regional Contractors (RC) and subcontractors, require review and acceptance by the Regional Managers (RM) of the Program Management Team (PMT) and the California High-Speed Rail Authority (CHSRA) staff prior to payment. (The Program Management Oversight Contractor is responsible for ensuring that the Program Management Team is meeting its contractual responsibility to thoroughly review RC invoices.) Review and approval of by the Project Management Team (Project Manager) ensures that contractor s perform the work specified in the contract scope of work in accordance with contract specifications.

The process for review of architectural invoices is presented below:



## RC MPR / INVOICE RELEASE

1. RC completes Monthly Progress Report (MPR) and Invoice by the 10<sup>th</sup> of each month. (MPR includes the invoice data.)
2. RC's MPR and invoice are posted on ProjectSolve2 (PS2) as well as mailed to CAHSRA.
  - a. CAHSRA date stamps the received Invoice upon receipt (15 day clock begins)
3. RC notifies the CAHSRA, RM and Operations that Invoice is ready for review via email / PS2 alert.

## INVOICE REVIEW

4. PMT RM reviews invoice as follows: (within 2 days of receipt)
  - a. Reviews the work performed against the costs charged and monitoring task/subtask expenditures against AWP budgets.
  - b. Compares the billing history with the approved budget.
  - c. Checks the schedule statistics for integrity to plan.
  - d. Reviews the Invoice Cover Fact Sheet.
  - e. Questions and concerns are emailed to the RC and CAHSRA and are resolved by the RC prior to RM approval (Questions and concerns from the RM stop the 15 day clock).
  - f. If the invoice is not approved by the RM, the RC addresses those concerns and resubmits for processing.
  - g. Reviews of the arithmetic and/or individual salaries are not required nor prohibited.

## INVOICE APPROVAL

5. To approve the invoice, the RM electronically signs the Invoice Cover Fact Sheet<sup>1</sup> and notifies CAHSRA, RC and PMT Operations via e-mail that the invoice has been approved for processing.
  - a. The approving email to the CAHSRA must include the electronically signed Invoice Cover Fact Sheet (the 15 day clock resumes).
  - b. Electronically signed Invoice Cover Fact Sheet is posted on PS2.
6. CAHSRA reviews and checks invoice dollars, rates contractual invoice requirements.
  - a. Any disputed items are documented and communicated to the RC.
  - b. Questions and concerns from the CHSRA stop the 15 day clock.
  - c. Acceptance of the RC answers by the CHSRA resumes the 15 days clock.
7. CAHSRA either (within 15 days of receipt)
  - a. Accepts and forwards approved invoice to DGS for processing, or

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<sup>1</sup> A sample Invoice Cover Fact Sheet is found in the appendix to this manual.

- b. Rejects and returns invoice to RC for corrections
8. Department of General Services (DGS) processes invoice for payment (within 15 days of receipt).
9. State Controller's Office (SCO) prepares and mails check to RC (within 15 days of receipt).

## **7.6 Insurance and Bonds**

To protect the State it is prudent to urge contractors to provide proof of insurance and any required bonds before starting work. If insurance is a requirement of a contract, Contract Managers must monitor expiration date(s) of all certificates of insurance provided by contractors during the life of the contract.

Approximately 60 days prior to insurance expiration date(s), Contract Managers should notify contractors, in writing, that new certificates are required. Upon receipt of insurance renewal certificates, Contract Managers should note the new expiration date(s). If the expiration date is before the end of the contract period, another renewal certificate must be obtained in the same manner.

Failure of Contractors to provide, upon notification, certificates proving renewal of insurance may be cause for termination. If any contractor insurance certificate expires during the life of a contract, Contract Manager shall notify the contractor to stop work until a current insurance certificate is obtained and approved.

When bonds are required, they may be applied to the whole contract (contract price) or on a task order basis. Task order-based contracts means the State pays Contractors only for services ordered, rendered, approved, and completed and not for an ongoing project or service.

Payment and performance bonds are due prior to the start date of the task order. No work may commence without receipt of valid payment bonds and performance bonds as noted in contract provisions.

## **7.7 Monitoring Contractor Performance**

Contract Managers are responsible for monitoring contractors' performance to ensure that work/services are being provided and are in compliance with the terms of the executed contract. Issues to consider when monitoring the contractor include, but are not limited to, the following:

- Timeliness of work/service;
- Quality of work/service;
- Reasonableness of charges/invoices; and
- Use of required DVBE/DBE/SB firms.

Contract Managers must monitor the work site as work is being performed. Contractors' poor performance or use of poor quality materials must be dealt with immediately. Contract Managers must order correction of problems by contractors prior to payment approval.

The following are methods by which Contract Managers can monitor contractors:

- Ongoing review of Contractors' work/service;
- Ongoing technical review of deliverables, if applicable;
- On-site visits to contractors as work/service is being provided, if applicable;
- Periodic meetings with contractors; and
- Timely review and processing of invoices.

If problem work is allowed to continue, remains in place, or is completed without any comment, the implied message to contractors is that the quality is acceptable and payment will be made in full. Early intervention will enable Contract Managers to either correct such problems in accord with contractors or place contractors in default.

Contract Managers must remember to always document, in writing, all communication with contractors. Many times this may involve writing a letter to a contractor to confirm and reiterate what was verbally discussed. Contract Managers should document everything in the contract file log.

### **7.8 Problems with Contractors**

Contract Managers must document, in writing and make part of their working contract files, all discussions with contractors regarding work, performance, or materials. Contract Managers must address contractors' poor performance or use of poor quality materials immediately. Contract Managers must order contractors in writing by certified letter to make immediate correction. DGS General Provisions state that if the State does not provide a contractor with a notice of rejection of deliverables within 60 days of delivery, then such deliverables and services will be deemed to be accepted.

The letters explain why work is not satisfactory and what corrective actions are expected. Contractors are given a specified period of time to satisfactorily perform. Contract Managers must ensure no payment is made on the unsatisfactory portions of contract performance until corrections are made.

The letters also inform contractors that if identified problems are not corrected or if performance is not satisfactorily improved, the Department will terminate the contract immediately then have the work finished by another Contractor and hold the original contractor liable for any additional costs.

Generally, contractors cannot charge (a second time) for correcting original poor performance, unacceptable work, or replacing poor quality material(s). Review contract language and be aware that disputes may result.

If payment and/or performance bonds are contract requirements, Contract Managers must immediately notify bonding companies of any problems that occur with contractors. In most cases, bonding companies also will inform contractors to correct the problems. If the unsatisfactory performance persists, Contract Managers should place those contractors in default.

### **7.9 Disputes with Contractors**

A dispute could encompass any disagreement, including, but not limited to, the following:

- Contract language interpretation;
- Payments; or
- Issues of unacceptable work, performance, or quality of materials.

Contract Managers are the first level of dispute resolution in all contracts, including A&E contracts.

## **8 RECORDS MANAGEMENT**

### **8.1 Overview**

Contract Managers are responsible for maintaining all contract records, invoices, and relevant documentation for five years, unless otherwise specified by law, retention schedules, etc. Up to three years after termination of a contract, an audit may be conducted to verify performance, compliance, and appropriateness of authorized payments. Contract Managers must keep detailed records in files established for each contract.

### **8.2 Contract Managers' Contract Files**

Contract Managers maintain a "working" contract file for each separate contract. Contract Managers' files should contain all records of monetary transactions, such as invoice payments, for audit purposes. After all activity has ended on a contract, the working file becomes an inactive file to be retained per retention requirements.

### **8.3 Records Maintenance**

Records must be maintained in sufficient detail to allow anyone reviewing documents to understand how a contract was requested, conducted, awarded, and administered. Recommendations for the maintenance of contract records are listed below:

- File guides/dividers labeled Contract, Insurance, Bonds, Invoices, Correspondence, etc;
- Copies of Service Contract Requests with all supporting documentation;
- Copies of all of insurance certificates, if applicable;
- Copies of all bonds, if applicable;
- Copies of all executed contract amendments, if applicable;
- Copies of executed contract;
- Log sheets to be used as a diary of all activities related to the contract. Note the date and content of discussion for each contact with anyone regarding the contract, e.g., notifications regarding start dates, pre-job conference, performance/non-performance of services, etc;
- All correspondence related to the contract or Contractor;
- Copies of all invoices, including backup documentation and a copy of a spreadsheet of expenses, must be retained;
- Spreadsheets of contract funds and expenses;
- Spreadsheets indicating DVBE/DBE/SB usage, if applicable;
- Clear reference to all associated electronic files; and
- Electronic files of all contracts administered.

If problems arise during the term of a contract, they must be fully documented in formal, written communications with Contractors. Letters to Contractors should outline problems related to non-performance and cite, verbatim, contract specifications so there are no doubts about the services required under a specific contract. All non-performance letters should be sent "certified" with copies going to all concerned parties. Copies of letters also should be kept in the files created for each contract.

For record retention purposes, the documents specified above are considered original records.



## **9. CLOSEOUT OF SERVICE CONTRACTS**

### **9.1 Overview**

Contract Managers are responsible for closing out contract files. Actual closeout procedures are contract-specific. Variables that will determine specific closeout procedures may include:

- Type of services provided;
- Specific performance requirements;
- Payment provisions;
- State property assigned to contractors;
- Specified deliverables; and
- Contract language related to closeout requirements.

Closeout activities may consist of, but are not limited to, the following:

Reminding contractors of contract expiration dates and that no payments will be made for any work, materials, or services provided after that date;

Notifying contractors of any unmet compliance or performance requirements that must be made before final payment can be made under the contract;

Sending contractors closeout instructions, if necessary;

Requesting and reviewing final deliverables, documents, and services from Contractors;

Requesting and reviewing final invoices;

Notifying accounting and authorizing final payment of invoices;

Disencumbering unused funds;

Completing contractor evaluations; and

Notifying audits of contract expiration, if applicable.

Contract Managers should document, in writing in the contract file, all closeout actions taken.

The Authority's records retention schedule requires that contract files be kept for a minimum of three years after final payment to contractors. The State Auditor and any duly authorized representative of the state or federal government may audit files up to three years after final payment to contractors.

## **9.2 Authorizing Final Payment**

Upon receipt of apparent final invoices, Contract Managers shall determine if any additional invoices will be forthcoming. If additional invoices will be sent, the Contract Manager should ask when they are expected to arrive and follow up with contractors, as necessary, to finalize payment. Contract Managers sign, date, and write "Final Payment - Approved" on each copy of the final invoice; make a copy for their contract file; and forward to accounting for payment.

Contracts that have a portion (typically 10 percent) of the payment retained pending contract completion will require contractors to submit final invoices that list each invoice number previously paid, the dollar amount withheld, and the total due as the final payment on the contracts. Memoranda to accounting must accompany these invoices, stating they are final invoices and all monies retained are to be released. Contractors should be furnished copies of the memoranda.

NOTE: If there is a closeout audit to be completed at the end of the contract, any unpaid funds should not be paid until the audit is completed and the Contract Manager has reviewed the final audit report. If full payment is made, it will be difficult for the State to recover any overpayment identified in the Final Audit Report.

## **9.3 Disencumbering Unused Funds**

At the point of contract completion, Contract Managers should disencumber any unused funds. Prior to disencumbering funds, Contract Managers should call contractors to determine if there are outstanding invoices that have not been forwarded for payment. Sometimes final invoices are sent long after contracts expire due to company buy-outs, name changes, etc.

## **9.4 Contractor Evaluation**

Contract/Contractor Evaluations, STD. 4, must be prepared for all consultant service contracts of \$5,000 or more and all A&E, Environmental, and related technical services consultant contracts. While Contract Managers must prepare STD. 4 only for consultant or personal services contracts of \$5,000 or more, the performance of other service contractors should, nevertheless, be evaluated.

## **9.5 Contract File Closeout**

Once Contract Managers input final documentation information into an electronic file, it also becomes an inactive file. For conventional files, Contract Managers should make notations that all documents are complete, all invoices have been paid, and any remaining funds are disencumbered.

## **10. COMPLIANCE WITH THE AMERICAN RECOVERY AND REINVESTMENT ACT**

### **10.1 Compliance Procedures**

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA provides federal funding for a variety of federal, state and local programs and requires increased accountability and control for the federal funds.

On March 27, 2009, Governor Schwarzenegger signed Executive Order S-02-09 creating the California Recovery Task Force to take the lead responsibility for establishing a systematic method for collecting, creating reporting standards, and centrally locating all information regarding the uses, status, outcomes, and accountability of ARRA funds received by California. All state agencies receiving ARRA funds are responsible for ensuring that necessary systems are in place to provide oversight, accounting, reporting, and project management controls to ensure all ARRA funds are used efficiently and for the intended purposes.

On January 27, 2010, President Obama approved \$2.25 billion in ARRA funds for California's high-speed rail project. Accountability for expenditure of these funds requires compliance with accountability provisions established by the California Recovery Task Force contained in Recovery Act Bulletin, Number 09-01 and subsequent bulletins issued by the Task Force. The bulletins contain specific guidelines and instructions for compliance with ARRA, including requirements for State agencies to establish readiness for receipt of funds and for reporting, accountability and control. The California High-Speed Rail Authority views the guidance contained in the bulletins as specific requirements for compliance with the provisions of ARRA. Additional Recovery Act Bulletins with specific requirements are forthcoming.

The Authority will implement the provisions of the Recovery Act Bulletins, including reporting requirements for receipt and expenditure of funds, job creation and retention, and all other relevant data elements required by ARRA as specified in Recovery Act Bulletin 09-08, via its database tracking system. As specified by Recovery Act Bulletin, Number 09-12, the Authority will report required data elements using the California ARRA and Accountability Tool (CAAT).

## APPENDIX

Invoice Cover Fact Sheet

## INSTRUCTIONS FOR COMPLETION OF THE INVOICE COVER

### GENERAL

1. The Invoice Cover consists of the following three (3) Tabs. Completion of these forms is required with each Invoice Submittal.
2. Text in green is for user input.
3. Text in blue are formulas - don't type over them unless instructed to do so.
4. Do not include this INSTRUCTIONS page with Invoice Cover.

### INVOICE COVER PAGE 1

1. 'Prime Consultant' Signature is to be signed by an employee of your firm who has the authority to approve this invoice. The Prime Consultant will then submit their invoice to the CHSRA directly, making a copy (posted on the CHSRA database) available to the reviewing / approving Oversight Manager (OM). Please note that the designated OM is to sign the "Invoice Approval" document and forward the Invoice Cover Fact Sheet Package via email/PDF to the Authority or notify the Authority of rejection or any issues found with the invoice within 2 days of the invoice posting on the CHSRA database.
2. The values to be filled in within the 'Contract' Table are contract total values and data which has been collected from the signing of your contract. In this table include values that have occurred in previous fiscal years; all other tables to be completed within this invoice cover are specific to the current fiscal year. Also, include in this table your project total of Disadvantage Business Enterprise (DBE) and Disabled Veteran Business Enterprise (DVBE) dollars spent within your contract.
3. It is anticipated that Partial Notices to Proceed will be issued throughout the current fiscal year. Upon receipt of an NTP, list the 'Date Issued' and 'Value' of each one.
4. The input for the 'Budget' section of this table is the approved Annual Work Program value for the current fiscal year.
5. The input for the 'Authorized Budget' section of this table is the authorized value of the 'Cumulative' total of Notices to Proceed

### INVOICE COVER PAGE 2

1. The information provided on this table is specific to the current fiscal year and is a summary of your and your subconsultant's fiscal year billings.
2. Currently all of your subconsultants are listed in the 'Subconsultant' Table; however if you have a particular subconsultant that is either a DBE or DVBE then remove them from the 'Subconsultant' Table and place them in the respective 'DBE Compliance' Table or 'DVBE Compliance' Table.

INVOICE COVER PAGE 3

1. The information provided is a summary of your and your subconsultant's WBS Task Totals for this current invoice.

**Invoice**  
**AWP FY 2010/2011**

California High Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, CA 95814  
Attn: Accounts Payable



Invoice Date: MM/DD/YY  
CHSR Invoice No: ##  
Prime Name Invoice No: #####  
Contract No: HSR##-##

Professional Services for: Month DD, YYYY through Month DD, YYYY  
Prime Consultant Name and Contract Title  
Tasks ### through ###

**Invoice Approval**

CONSULTANT

CALIFORNIA HIGH SPEED RAIL AUTHORITY

PRIME CONSULTANT \_\_\_\_\_ Date \_\_\_\_\_

Received: \_\_\_\_\_  
CONTRACT ANALYST \_\_\_\_\_ Date \_\_\_\_\_

Approved: \_\_\_\_\_  
OVERSIGHT MANAGER \_\_\_\_\_ Date \_\_\_\_\_

Approved: \_\_\_\_\_  
FINANCIAL OFFICER \_\_\_\_\_ Date \_\_\_\_\_

|                       | C  | O     | N | T                      | R | A  | C     | T |
|-----------------------|----|-------|---|------------------------|---|----|-------|---|
| Capacity:             | \$ | -     |   | DBE \$ Spent to date:  |   | \$ | -     |   |
| Previously Billed:    | \$ | -     |   | % DBE Participation:   |   |    | 0.00% |   |
| Current Invoice:      | \$ | -     |   | DVBE \$ Spent to date: |   | \$ | -     |   |
| Total Billed to Date: | \$ | -     |   | % DVBE Participation:  |   |    | 0.00% |   |
| % Capacity Spent:     |    | 0.00% |   |                        |   |    |       |   |
| Capacity Remaining:   | \$ | -     |   |                        |   |    |       |   |

**ANNUAL WORK PROGRAM (AWP) FISCAL YEAR 2010/2011**

**NOTICE TO PROCEED (NTP)**

| NTP # | Date Issued | Value | Cumulative |
|-------|-------------|-------|------------|
| 1     | MM/DD/YYYY  | \$ -  | \$ -       |
| 2     | MM/DD/YYYY  | \$ -  | \$ -       |
| 3     | MM/DD/YYYY  | \$ -  | \$ -       |
| 4     | MM/DD/YYYY  | \$ -  | \$ -       |
| 5     | MM/DD/YYYY  | \$ -  | \$ -       |
| 6     | MM/DD/YYYY  | \$ -  | \$ -       |

**BUDGET**

**AUTHORIZED BUDGET**

|                   |       |                              |       |
|-------------------|-------|------------------------------|-------|
| Budget:           | \$ -  | Authorized Budget:           | \$ -  |
| Spent to Date:    | \$ -  | Previously Billed:           | \$ -  |
| % Budget Spent:   | 0.00% | Current Invoice:             | \$ -  |
| Budget Remaining: | \$ -  | Total Billed to Date:        | \$ -  |
|                   |       | % Authorized Budget Spent:   | 0.00% |
|                   |       | Authorized Budget Remaining: | \$ -  |

Current Invoice Amount \$0.00

**Please remit payment to: Prime Consultant Name at ADDRESS**

**Invoice**  
**AWP FY 2010/2011**

California High Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, CA 95814  
Attn: Accounts Payable



Invoice Date: MM/DD/YY  
CHSR Invoice No: ##  
Prime Name Invoice No: #####  
Contract No: HSR##-##

Professional Services for: Month DD, YYYY through Month DD, YYYY  
Prime Consultant Name and Contract Title  
Tasks ### through ###

**Current Invoice Consultant/Subconsultant Summary**

| Prime Consultant | Current Amount Billed | Prior Billed Amount | Total Billed To Date | Total Budget | Total % Spent |
|------------------|-----------------------|---------------------|----------------------|--------------|---------------|
| Prime Consultant | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |

| Subconsultant               | Current Amount Billed | Prior Billed Amount | Total Billed To Date | Total Budget | Total % Spent |
|-----------------------------|-----------------------|---------------------|----------------------|--------------|---------------|
| Sub-Consultant 1            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 2            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 3            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 4            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 5            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 6            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 7            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| Sub-Consultant 8            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| <b>Subconsultant-Total:</b> | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |

**DBE Compliance**

| Subconsultant              | Current Amount Billed | Prior Billed Amount | Total Billed To Date | Total Budget | Total % Spent |
|----------------------------|-----------------------|---------------------|----------------------|--------------|---------------|
|                            | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| <b>DBE Subcons.-Total:</b> | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |

**DVBE Compliance**

| Subconsultant               | Current Amount Billed | Prior Billed Amount | Total Billed To Date | Total Budget | Total % Spent |
|-----------------------------|-----------------------|---------------------|----------------------|--------------|---------------|
|                             | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |
| <b>DVBE Subcons.-Total:</b> | \$ -                  | \$ -                | \$ -                 | \$ -         | 0.00%         |

|                         |      |      |      |      |       |
|-------------------------|------|------|------|------|-------|
| <b>Total Amount Due</b> | \$ - | \$ - | \$ - | \$ - | 0.00% |
|-------------------------|------|------|------|------|-------|



**California High Speed Rail Authority**  
**925 L Street, Suite 1425**  
**Sacramento, CA 95814**  
**Attn: Accounts Payable**



**Professional Services for: Month DD, YYYY through Month DD, YYYY**  
**Prime Consultant Name and Contract Title**  
**Tasks ### through ###**

| DESCRIPTION                |  | HOURS | AMOUNT (\$) |
|----------------------------|--|-------|-------------|
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| T A S K                    |  | #.##  |             |
| Labor                      |  | \$    | -           |
| Travel Expense Claim (TEC) |  | \$    | -           |
| Other ODC's                |  | \$    | -           |
| Task Subtotal              |  | \$    | -           |
| Total Invoice Amount       |  | \$    | -           |